



Marc E. Elias  
PHONE: 202.434.1609  
FAX: 202.634.9126  
EMAIL: melias@perkinscoie.com

607 Fourteenth Street N.W.  
Washington, D.C. 20005-2071  
PHONE: 202.628.6600  
FAX: 202.434.1690  
www.perkinscoie.com

November 8, 2007

Mary Dove, Commission Secretary  
Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20463

Re: MUR 5849  
Kathleen Cannon

Dear Ms. Dove:

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FEDERAL ELECTION  
COMMISSION  
OFFICE OF GENERAL  
COUNSEL  
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Through this letter, Respondent Kathleen Cannon submits her response to the Office of General Counsel's pre-probable cause brief, dated October 17, 2007, a complete copy of which was provided to Respondent on October 24, 2007 (the "Brief"). For the reasons stated below, the Brief should be rejected and this matter dismissed.

Procedural and substantive gaps and flaws throughout this investigation render further action against Ms. Cannon unsupportable. First, as noted in prior submissions concerning this matter, the Commission failed to comply with its own statutory obligations under 2 U.S.C. § 437g. In a letter dated October 24, 2006, the Commission informed Ms. Cannon that it had found reason to believe that she knowingly and willfully violated 2 U.S.C. §§ 441(b)(a) and 441f while employed by Bank of America. No sworn complaint was ever sent to Ms. Cannon as required under 2 U.S.C. § 437g(a)(1). Labeling an unsworn complaint from Bank of America directed at a former employee as a "sua sponte" submission does not comply with the spirit or the letter of 2 U.S.C. § 437g. Such label does not excuse the Commission from its obligation to verify that a complaint meets the statutory requirements of 2 U.S.C. § 437(g) and to provide the sworn complaint to the person alleged to have committed a violation.

Next, the Commission sought to depose Ms. Cannon – still, without providing her with a copy of the underlying allegations against her. To depose Ms. Cannon in search of civil and criminal liability, while denying her the procedural right afforded to respondents by statute – namely, to receive a copy of a sworn complaint from the third party that

59258-0001/LEGAL13701244.1

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launched the allegations to begin with – would violate fundamental notions of due process, were she to acquiesce. Understandably, she did not.

While the Brief does provide some exhibits, and in that sense is an improvement over prior materials provided to Ms. Cannon, it still lacks citations on key issues, such as the nature and scope of the advice on federal campaign law that Ms. Cannon received from "staff" of Representative Howard P. 'Buck' McKeon. See Brief, p. 2. This seems a rather thin basis for concluding that Ms. Cannon received at that time a thorough schooling in 2 U.S.C. §§ 441b(a) and 441f that would support allegations of a knowing and willful violation.

Moreover, the exhibits provided are highly selective. Unquestionably, the Brief does show a great deal of cooperation from Bank of America in one narrow area, but one cannot help but question the thoroughness of evidence provided by a Bank that seeks to scapegoat one former employee. Ms. Cannon was supervised by eight different Bank of America officers during her employment at Bank of America from 1999-2005, yet they are noticeably absent from the documentation provided by Bank of America and submitted as exhibits to the Brief, nor is their role discussed in the Brief itself.

Bank of America, of course, has every incentive to cast itself as ever-vigilant and to isolate Ms. Cannon from her superiors. Throughout the Commission's dealings with Ms. Cannon, it is apparent that the Commission has embraced certain assumptions about the supervisory structure of Bank of America, no doubt based on Bank of America's self-serving efforts to focus all the attention on Ms. Cannon, while the Bank officers who supervised her activities remain hidden in the shadows. Yet despite Bank of America's efforts to portray itself as operating within a culture of compliance, it is curious, nonetheless, that the ethics materials from the Bank included as Exhibit 18 of the Brief are dated June 1, 2005 – after activities described in the Brief were alleged to have occurred.

Since the time of the alleged activities, Ms. Cannon has left the banking profession and attended divinity school. She is now employed as a pastor, and has been sufficiently scarred by this experience that she is likely to avoid participation in the political process for many years to come. In the meantime, however, Bank of America remains a highly regulated entity whose fortunes rise and fall on the will of Congress. While Bank of America may want the Commission to believe that focusing on Ms. Cannon will ensure a

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**thorough investigation of whether Bank of America adheres to federal campaign finance law, the Commission's attention is better focused on the activities of the Bank officers who supervised Ms. Cannon and who may yet remain at Bank of America.**

**For the foregoing reasons the Commission should reject the Brief and dismiss the allegations against Ms. Cannon.**

**Very truly yours,**

  
**Marc E. Elias**

**Counsel to Kathleen Cannon**

**cc: Marianne Abely,  
Office of General Counsel (3 copies)**